

PART 5000 [RESERVED]

PART 5001—GUARANTEED LOANS

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§ 5001.1 Purpose and scope.

(a) *General.* The purpose and scope of this part is to simplify, standardize, and improve the making, guaranteeing, holding, servicing, and liquidating of Rural Development guaranteed loans. This part applies to those guaranteed loan programs specified in subpart B of this part.

(b) *Relationship between subpart A and subpart B requirements.* All guaranteed loan programs subject to this part are subject to the requirements specified in subpart A, unless there is a program specific provision in subpart B that overrides the corresponding subpart A provision. Such as subpart B provision may modify the scope of or replace entirely the corresponding subpart A provision.

§ 5001.2 Definitions.

The following definitions are applicable to the terms used in this part.

Agency. The Rural Housing Service; the Rural Utilities Service; and the Rural Business-Cooperative Service or the successors for the programs it administers.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50% or greater of their gross income is derived from the operations.

Approved lender. A lender that the Agency has determined meets the criteria specified in § 5001.9(a) through (c), as applicable, of this part.

Arm's length transaction. A transaction between ready, willing, and able disinterested parties who are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other.

Assignment guarantee agreement. A signed, Agency-approved agreement between the Agency, the lender, and the

holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

Assurance agreement. A signed, Agency-approved agreement between the Agency and the lender that assures the Agency that the lender is in compliance with and will continue to be in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15, and Agency regulations promulgated there under.

Biomass. Any organic material, excluding paper that is commonly recycled and unsegregated solid waste, that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste; wood residues; plants, aquatic plants and grasses; natural fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases.

Borrower. The person that borrows, or seeks to borrow, money from the lender, including any party or parties liable for the guaranteed loan except guarantors.

Business plan. A comprehensive document that clearly describes the borrower's ownership structure and management experience including, if applicable, discussion of a parent, affiliates, and subsidiaries; a discussion of how the borrower will operate the proposed project, including, at a minimum, a description of the business and project, the products and services to be provided, pro forma financial statements for a period of 2 years, including balance sheet, income and expense, and cash flows, and the availability of the resources necessary to provide those products and services.

Collateral. The asset(s) pledged by the borrower in support of the loan.

Commercially available. A system that has a proven operating history of viability of at least one year, specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily

available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

Community support. Sufficient evidence of the area to be served that there is enough demand and support for the service or facility to make the project economically viable.

Conditional commitment. An Agency-approved form of commitment to the lender that the loan guarantee the lender has requested is approved subject to the completion of all conditions and requirements contained in the commitment as set forth by the Agency.

Cooperative organization.

(1) Any entity that is legally chartered as a cooperative.

(2) Any entity that is not legally chartered as a cooperative, but is owned and operated for the benefit of its members, including the manner in which it distributes its dividends and assets, provided those members are not employees of the organization.

Day. Calendar day, unless otherwise stated.

Debt coverage ratio. The ratio obtained when dividing the realistically projected earnings and cash injection before interest, taxes, depreciation, and amortization by the annual debt service (principal and interest).

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other related documents evidencing the loan.

Delinquent loan. A loan for which a scheduled loan payment has not been received by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Eligible project costs. Those expenses approved by the Agency for the project.

Energy assessment. A report conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency. The report identifies and provides a savings and cost analysis of low-cost/no-cost measures, estimates overall costs and expected energy savings from the funded improvements, and dollars saved per year and provides an estimate of the anticipated weighted average payback period in years.

Energy audit. A report conducted by a Certified Energy Manager or Professional Engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The report will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions similar to but in more detail than an energy assessment.

Energy efficiency improvement. A product or process installed in a facility, or building, that reduces energy consumption.

Essential community facility. The physical structure (including machinery and/or equipment) financed or the resulting service provided to primarily rural residents that combined or severally must:

- (1) Perform or fulfill a function customarily provided by a local unit of government;
- (2) Be a public improvement needed for the orderly development of a rural community;
- (3) Benefit the community at large;
- (4) Not include commercial or business undertakings (except for limited authority for industrial parks); and
- (5) Be within the area of jurisdiction or operation for eligible public bodies or a similar local rural service area of a not-for-profit corporation.

Existing business. A business that has been in operation for at least one full year. Mergers, changes in the business name, or legal type of entity of a currently operating business, or expansions of product lines are considered to be existing businesses as long as there is not a significant change in operations.

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of its expectation for success.

Future recovery. Funds collected by lender after final loss claim.

Guaranteed loan. A loan made and serviced by a lender for which the Agency has issued a Loan Note Guarantee.

High Impact Business. A business that is part of an industry that has 20% or

more of its sales in international markets; offers high value, specialized products and services that command high prices; and creates jobs with an average wage exceeding 125% of the Federal minimum wage.

Holder. The person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan, cash, or other financing mechanism.

Lender. An entity that has been approved by the Agency to originate and service loans guaranteed under this part.

Lender's agreement. The Agency-approved signed form between the Agency and the lender setting forth the lender's loan responsibilities under an issued Loan Note Guarantee.

Lender's analysis. The analysis and evaluation of the credit factors associated with each guarantee application to ensure loan repayment through the use of credit document procedures and an underwriting process that is consistent with industry standards and the lender's written policy and procedures.

Lending entity. An entity that originates and services a loan that has not been approved to originate loans under this part.

Loan agreement. The Agency-approved agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan classification. The process by which loans are examined and categorized by degree of potential loss in the event of default.

Loan note guarantee. The Agency-approved form containing the terms and conditions of the guarantee of an identified loan.

Loan-to-value ratio. The ratio of the dollar amount of a loan to the dollar

value of the collateral pledged as security for the loan.

Local government. A county, municipality, town, township, village, or other unit of general government below the State level. The term also includes tribal governments when tribal lands are within the service area.

Market value. The amount for which property would sell for its highest and best use at a voluntary sale in an arm's length transaction.

Material change. Any change in the purpose of the loan, the financial condition of the borrower, or the collateral, that might jeopardize loan performance.

Monetary default. A loan is in monetary default if payment is not made within 30 days after the payment due date.

Negligent loan origination.

(1) The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of unguaranteed loans; or

(2) The failure of the lender to perform its origination responsibilities in accordance with its origination policies and procedures in use by the lender at the time the loan is made.

(3) The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing.

(1) The failure of a lender to perform those services that a reasonably prudent lender would perform in servicing and liquidating its own portfolio of unguaranteed loans; or

(2) The failure of the lender to perform its servicing responsibilities in accordance with its servicing policies and procedures in use by the lender at the time the loan is made.

(3) The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Other lending entity. A lending entity who does not meet the definition of regulated or supervised lending entity.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing

the note, and all responsibility for loan servicing and liquidation.

Person. Any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, public body, or State or local government.

Post-application. The date that the Agency receives an essentially completed application. An "essentially completed" application is an application that contains all parts necessary for the Agency to determine borrower and project eligibility and to conduct the technical evaluation.

Pre-application. Information submitted to the Agency for which the applicant requests the Agency to make an informal eligibility assessment prior to submitting a full application. The information must be sufficient for the Agency to make a determination that the borrower and project are eligible.

Pre-commercial technology. Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available.

Preferred lender. An approved lender that, as determined by the Agency, also meets the criteria specified in § 5001.9(d) of this part.

Preliminary architectural report. A document normally prepared by a professional, licensed architect that describes the existing situation and problem, analyzes alternatives, and proposes a specific course of action from an architectural and environmental perspective. Sufficient information must be provided to adequately assess the need for, the feasibility of, and the cost of the project.

Preliminary engineering report. A document normally prepared by the owner's consulting engineer that describes the owner's present situation, analyzes alternatives, and proposes a specific course of action from an engineering and environmental perspective.

Promissory Note. A legal instrument that a borrower signs promising to pay a specific amount of money at a stated time. "Note" or "Promissory Note" shall also be construed to include

“Bond” or other evidence of debt where appropriate.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet obligations to protect or preserve collateral.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; or an Indian tribe on a Federal or State reservation or other Federally recognized Indian tribe or an organization controlled by any of the above.

Qualified consultant. An independent, third-party possessing the knowledge, expertise, and experience to perform in an efficient, effective, and authoritative manner the specific task required.

Regulated or supervised lender. A lender that is subject to examination or supervision by an appropriate agency of the United States or a State that supervises or regulates credit institutions.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of that section; or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Renewable energy.

(1) Energy derived from a wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric source;

(2) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (1) of this definition.

Renewable energy system. A system that produces or produces and delivers usable energy from a renewable energy source.

Report of loss. An Agency-approved form used by lenders when reporting a loss under an Agency guarantee.

Rural or rural area.

(1) For the purpose of providing Community Facilities loan guarantees, rural and rural area are defined as any area not in a city, town, or Census Designated Place with a population of more than 20,000 inhabitants according to the latest decennial census of the United States.

(2) For the purpose of providing Water and Waste Disposal loan guarantees, rural and rural area are defined as any area not in a city, town, or Census Designated Place with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

(3) For purposes of providing Business and Industry and Renewable Energy/Energy Efficiency loan guarantees, rural and rural area are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area.

(4) Notwithstanding any other provision of this definition, in determining which census blocks in an urbanized area are not in a rural area, the Agency shall exclude any cluster of census

blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than 2 census blocks that are otherwise considered not in a rural area under this definition.

(5) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State. For Puerto Rico, Census Designated Place, as defined by the U.S. Census Bureau, will be used as the equivalent to city or town. For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

Small business. An entity is considered a small business in accordance with the Small Business Administration's small business size standards by the North American Industry Classification System found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet Small Business Administration's definition of small business. These entities must operate independent of direct Government control. With the exception of the entities described above, all other not-for-profit entities are excluded.

Startup business. A business that has been in operation for less than one full year. Startup businesses include newly formed entities leasing space or building ground up facilities in a new market area, even if the owners of the startup business own affiliated businesses doing the same kind of business. Newly formed entities that are buying existing businesses or facilities will be considered an existing business as long as the business or facility being bought

remains in operation and there is no significant change in operations.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State Bond Banks and State Bond Pools. An entity authorized by the State to issue State debt instruments and utilize the funds received to finance projects that qualify for a guaranteed loan under this part.

Tangible net worth. Tangible assets minus liabilities.

Total project cost. The sum of all costs associated with a completed project.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the outstanding debt.

Water and waste disposal facility. A physical structure or series of structures used to provide water and waste disposal services. Such structures include, but are not necessarily limited to, those for rural drinking water, sanitary sewage, solid waste disposal, and storm wastewater disposal.

Working capital. Current assets available to support a business' operations and growth. Working capital is calculated as current assets less current liabilities.

§ 5001.3 Agency authorities.

(a) *Exception authority.* Except as specified in paragraphs (a)(1) through (4) of this section, the applicable Administrator may, on a case-by-case basis, make exceptions to any requirement or provision of this part, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable law.

RBS, RHS, and RUS, USDA

(1) *Lender and borrower eligibility.* No exception to lender or borrower eligibility can be made.

(2) *Project eligibility.* No exception to project eligibility can be made.

(3) *Rural area definition.* No exception to the definition of rural area, as defined in §5001.2, can be made.

(4) *Term length.* No exception to the maximum length of the loan term, as specified in §5001.31(c), can be made.

(b) *Review or appeal rights.* A person has review or appeal rights in accordance with 7 CFR part 11.

§ 5001.4 Oversight and monitoring.

(a) *General.* The lender will cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee under this program to ensure compliance with this part, including ensuring lenders continue to meet the criteria for being an approved lender or a preferred lender. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders. In addition, the Agency will review all approved and preferred lenders for eligibility at least every two years.

(b) *Reports and notifications.* The Agency will require lenders to submit to the Agency reports and notifications to facilitate the Agency's oversight and monitoring. These reports and notifications include, but are not necessarily limited to:

(1) Periodic reports, to be submitted semiannually, regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material change in the general financial condition of the borrower since the last periodic report was submitted.

(2) Monthly default reports for each loan in monetary default using a form approved by the Agency.

(3) Notification within 15 calendar days of:

(i) Any loan agreement violation by any borrower, including when a borrower is 30 days past due or is otherwise in default;

(ii) Any permanent or temporary reduction in interest rate; and

(iii) Any downgrade in the loan classification of any loan made under this part.

(4) If a lender receives a final loss payment, an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 5001.5 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this part may be obtained through the Agency.

BASIC ELIGIBILITY PROVISIONS

§ 5001.6 Project eligibility.

To be eligible for a guaranteed loan under this part, at a minimum, a borrower and project, as applicable, must meet each of the requirements specified in paragraphs (a) through (c) of this section.

(a) The project must meet the requirements specified in subpart B of this part.

(b) The borrower must meet the financial metric criteria specified in paragraphs (b)(1) through (b)(3) of this section. These financial metric criteria shall be calculated from the realistic information in the pro forma statements or borrower financial statements, submitted in accordance with §5001.12(a)(10), of a typical operating year after the project is completed and stabilized. For projects that the Agency deems to be more risky, such as racetracks and water parks, the Agency will require higher underwriting standards for such projects.

(1) A debt coverage ratio of 1.0 or higher;

(2) A debt-to-tangible net worth ratio of 4:1 or lower for startup businesses and of 9:1 or lower for existing businesses.

(3) A loan-to-value ratio of no more than 1.0.

(c) For projects that are determined by a service area, boundaries for the proposed service area must be chosen in such a way that no user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

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(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the borrower must publicly announce a plan for extending service to areas not initially receiving service. Also, the borrower must provide written notice to potential users located in the areas not to be initially served.

§ 5001.7 Unauthorized projects and purposes.

Loans guaranteed under this part must not be used for any projects other than those authorized in subpart B of this part. In addition, loan funds may not be used to finance:

(a) Investment or arbitrage, or speculative real estate investment.

(b) Golf courses or similar recreational facilities listed in the annual Notice of Funds Availability.

(c) Any business deriving more than 10% of its annual gross revenue from gambling activity, excluding State-authorized lottery proceeds and, for public bodies and for not-for-profit approved projects only, any other funds derived from gambling activity, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

(d) Prostitution or businesses deriving income from activities of a prurient sexual nature.

(e) Any guarantee of a:

(1) Line of credit;

(2) Lease payment; or

(3) Loan made by other Federal agencies.

(f) Any project eligible for Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(g) Finders', packagers', or loan brokers' fees.

(h) Any business deriving income from illegal drugs, drug paraphernalia,

or any other illegal product or activity.

(i) To pay the borrower for the rental of equipment or machinery owned by the borrower.

(j) The payment of either a Federal judgment or a debt owed to the United States, excluding other Federal loans.

(k) Any project that creates, directly or indirectly, a conflict of interest or an appearance of a conflict of interest.

(l) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development and limited sections of essential community facilities when the activity in the leased space is related to and enhances the primary purpose for which the facility is being established by the borrower.

(m) Any project located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.*

(n) Any project located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(o) Any other similar project or purpose that the Agency determines is ineligible for funding under this part and publishes in a FEDERAL REGISTER notice.

§ 5001.8 Borrower eligibility.

(a) *Eligible entities.* To be eligible, a borrower must meet the requirements specified in paragraphs (a)(1) and (2) of this section and in subpart B to this part, as applicable.

(1) *Citizenship.* Citizenship requirements are as follows:

(i) Individual borrowers must be citizens of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or reside in the U.S. after legal admittance for permanent residence.

(ii) Entities other than individuals must be at least 51% owned or controlled by persons who are either citizens as identified under paragraph

(a)(1)(i) of this section or are legally admitted permanent residents residing in the U.S.

(2) *Legal authority and responsibility.* Each borrower must have, or obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services and to obtain, give security for, and repay the proposed loan.

(b) *Ineligible entities.* A borrower will be considered ineligible for a guarantee if either the borrower or any owner with more than 20% ownership interest in the borrower:

(1) Has an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court),

(2) Is delinquent on the payment of Federal income taxes,

(3) Is delinquent on a Federal debt, or

(4) Is debarred or suspended from receiving Federal assistance.

§ 5001.9 Participation eligibility requirements.

Only lenders are eligible to participate in the guaranteed loan programs described in this part.

(a) *General requirements.* The requirements in this paragraph apply to all lending entities who wish to participate in the guaranteed loan programs described in this part.

(1) *Loan origination and servicing policies and procedures.* The lending entity must submit a written summary of its loan origination and servicing policies and procedures, addressing, at a minimum, the areas specified in paragraphs (a)(1)(i) through (ix) of this section. At the Agency's request, the lending entity must make available any or all of its loan origination and servicing policies and procedures.

(i) Internal credit review process.

(ii) Underwriting process.

(iii) Portfolio management.

(iv) Delinquent loan handling.

(v) Liquidation process.

(vi) Releases.

(vii) Termination.

(viii) Final loss claims.

(ix) Exceptions to loan policies and procedures and other information relevant to Agency guaranteed loans.

(2) *Audit and management control system.* The lending entity must maintain internal audit and management control

systems to evaluate and monitor the overall quality of its loan origination and servicing activities.

(3) *Debarment and suspension.* The lending entity must not be otherwise debarred or suspended by the Federal government.

(b) *Regulated or supervised lending entities.* The requirements for a regulated or supervised lending entity that has no outstanding guaranteed loans with the Agency to be eligible to participate are identified in paragraph (b)(1) of this section. The requirements for a regulated or supervised lending entity that has at least one outstanding guaranteed loan with the Agency to be eligible to participate are identified in paragraph (b)(2) of this section.

(1) *No outstanding Agency guaranteed loans.* A regulated or supervised lending entity that does not have any outstanding guaranteed loans as of January 16, 2009 with the Agency must apply for lender approval.

(i) *Lender application.* If the lending entity is a state chartered entity, the lending entity must submit the application, and other required documentation, to the State in which it is chartered. If the lending entity is a federally chartered entity, the lending entity must submit the application, and other required documentation, to the State in which the entity's headquarters is located.

(ii) *Policies and procedures.* The lending entity must submit with the lender application a written summary of its loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(iii) *Lending history and experience.* The lending entity must submit with the lender application a description of its lending history and experience, including:

(A) Evidence of demonstrated expertise in loan origination, making, securing, servicing, and collecting loans;

(B) Length of time in the commercial lending business;

(C) Its experience with government guaranteed lending, particularly within any of the subject programs;

(D) The range and volume of its lending and servicing activity;

(E) The current status of its loan portfolio;

(F) Its commercial loan fee structure;

(G) The level of experience of its management, lending, and servicing staff; and

(H) Audited financial statements not more than 1 year old.

(iv) *Approval process.* The Agency will review the application, including the summary of the lending entity's loan origination and servicing policies and procedures, submitted under paragraph (b)(1) of this section, to determine whether the lending entity is approved for participation under this part. The Agency may request additional clarification or information as necessary in its determination of lender approval.

(A) The Agency will approve or disapprove the lending entity on the basis of the information in the application, including the information describing the lending entity's loan origination and servicing policies and procedures.

(B) The lending entity must be in good standing with its regulator to be approved for participation.

(2) *With outstanding Agency guaranteed loans.* A regulated or supervised lending entity that has at least one outstanding guaranteed loan with the Agency as of January 16, 2009 is required to certify to the Agency that the lending entity is in good standing with its regulator and to submit a written summary of its loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(i) The lending entity must submit this certification and description either with, or prior to, its first application for loan guarantee under this part.

(ii) Such lending entity is approved for participation under this part when the Agency receives the lending entity's certification that the lending entity is in good standing with its regulator and the written summary of the lending entity's loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(3) *Lender's agreement.* If approved, the lender may sign a Lender's Agreement with the Agency. If the Lender's Agreement is executed by the lender and the Agency, the lender may submit an application for guarantee in any

State in which it is authorized to do business. Approval for participation constitutes approval to participate in all guaranteed loan programs described in this part.

(4) *Maintenance of approved status.* Approved status is maintained as long as the lender remains in good standing with its regulator, in conformance with this part, or until otherwise notified by the Agency. If a lender fails to maintain its status as a Lender or has no outstanding loans with the Agency for two consecutive years, it must reapply under this section for lender approval.

(c) *Other lending entities.* Any lending entity not eligible in paragraph (b) of this section that wishes to originate a new loan under this part may apply for approved status, as specified in paragraph (c)(2) of this section, provided it meets the criteria specified in paragraph (c)(1) of this section.

(1) *Criteria for submitting an application for lender approval.* An other lending entity may submit an application for lender approval provided the lending entity has:

(i) A minimum net worth of \$2.5 million;

(ii) Liquid assets of at least \$500,000;

(iii) Acceptable line(s) of credit that totals \$5 million or more; and

(iv) Undergone an examination acceptable to the Agency.

(2) *Application for lender approval.* The lending entity must submit an application to the Rural Development State Office in the State in which the entity is chartered providing the information specified in paragraphs (c)(2)(i) through (viii) of this section.

(i) A written summary of its loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(ii) Evidence showing that it has the necessary capital, resources, and funding capacity to successfully meet its responsibilities.

(iii) Copies of any license, charter, or other evidence of its legal authority to engage in the proposed loan making and servicing activities.

(iv) Certificate(s) of good standing from the States in which the lender is licensed and intends to conduct business.

(v) A description of its lending history and experience, including:

(A) Evidence of demonstrated expertise in loan origination, making, securing, servicing, and collecting loans;

(B) Length of time in the commercial lending business;

(C) Its experience with government guaranteed lending, particularly within any of the subject programs;

(D) The range and volume of its lending and servicing activity;

(E) The current status of its loan portfolio;

(F) Its commercial loan fee structure;

(G) The level of experience of its management, lending, and servicing staff; and

(H) Its audited financial statements not more than 1 year old.

(vi) Documented sources of its funds for funding and closing loans.

(vii) Office location(s) and its proposed geographic lending area(s).

(viii) Results of the examination required under paragraph (c)(1) of this section.

(3) *Agency review.* The Agency will review the application, including the lending entity's loan origination and servicing policies and procedures, submitted under paragraph (b)(1) of this section to determine whether the lending entity is approved for participation under this part. The Agency may request additional clarification or information as necessary in its determination of lender approval. The Agency will approve or disapprove the lending entity on the basis of the information in the application, including the information describing the entity's loan origination and servicing policies and procedures.

(4) *Lender's agreement.* If approved, the lender may sign a Lender's Agreement with the Agency. If the Lender's Agreement is executed by the lender and the Agency, the lender may submit an application for guarantee in any State in which it is authorized to do business.

(5) *Maintenance of approved status.* Approved status is maintained as long as the lender meets or exceeds minimum Agency requirements. If the Lender fails to maintain its status as a lender or has no outstanding loans with

the Agency for two consecutive years, it becomes a lending entity and must reapply under this section for lender approval.

(d) *Preferred lenders.* Approved lenders may apply to the Agency for preferred lender status for the Business and Industry (B&I) guaranteed loan program in subpart B of this part. In addition, this preferred lender status may be expanded to include other programs contained in this part pursuant to notice published in the FEDERAL REGISTER.

(1) *Criteria for receiving preferred lender status.* The lender must meet each of the requirements specified in paragraphs (d)(1)(i) through (vii) of this section to obtain preferred lender status.

(i) Have a lender loss rate not in excess of the maximum "preferred lender" loss rate established by the Agency and published in a FEDERAL REGISTER Notice.

(ii) Have made a minimum of 10 guaranteed Business and Industry loans, unless another minimum number is specified in a notice in the FEDERAL REGISTER.

(iii) Show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.

(iv) Have no more than one instance of Federal government negligent loan origination or servicing where a loss has been paid.

(v) Not be under any regulatory enforcement action, such as a cease and desist order, written agreement, or an appointment of conservator or receiver.

(vi) Demonstrated high standards of professional competence for the lender's staff, particularly key underwriting and servicing staff.

(vii) Adequate lender facilities to conduct its Agency business at a high level of performance.

(2) *Locations.* The lender must identify in its application for preferred lender status the States in which the lender desires to receive preferred lender status and its branch offices which the lender desires to be considered by the Agency for approval. The Agency will determine which branches of the lender have the necessary experience

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and ability to participate in the preferred lender program based on the information submitted in the lender application and on Agency experience.

(3) *Timeframe and renewal.* A lender who is determined to be eligible for preferred lender status will be granted such status for a period not to exceed four years from the date the Lender's Agreement is executed. A lender must submit a written request for renewal of a Lender's Agreement with preferred lender status which includes information:

(i) Updating the material submitted in the initial application; and

(ii) Addressing any new criteria established by the Agency since the initial application.

(4) *Revocation of preferred lender status.* The Agency may revoke a lender's preferred lender status at any time during the four-year term for cause. Any of the following instances constitute cause for revoking or not renewing preferred lender status:

(i) Violation of a term of the Lender's Agreement;

(ii) Failure to maintain preferred lender eligibility criteria;

(iii) Knowingly submitting false or misleading information to the Agency;

(iv) Basing a request on information known to be false;

(v) Deficiencies that indicate an inability to process or service Agency guaranteed loan programs loans in accordance with this part;

(vi) Failure to correct cited deficiencies in loan documents upon notification by the Agency;

(vii) Failure to submit status reports in a timely manner;

(viii) Failure to use forms, or follow its loan origination and servicing policies and procedures accepted by the Agency; or

(ix) Failure to reimburse the holder the amount of repurchase, with accrued interest, in accordance with § 5001.17(i)(1).

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§ 5001.10 [Reserved]

BASIC GUARANTEE APPLICATION PROVISIONS

§ 5001.11 Guarantee application process.

(a) *Beginning the process.* Any lender may submit a pre-application or a full application to begin an application for guarantee.

(1) *Pre-application.* Based on the information in the pre-application, the Agency will make an informal assessment of the eligibility of the borrower and project. The Agency will provide written informal comments regarding the pre-application's strengths and weaknesses. The Agency's assessment may change based on subsequently submitted information, is solely advisory in nature, does not obligate the Agency to approve a guarantee request, and is not considered a favorable or adverse decision by the Agency.

(2) *Guarantee application.* For each guarantee request, the lender must submit to the Agency an application that is in conformance with § 5001.12.

(b) *Guarantee application evaluation.* All loan guarantee applications will be evaluated according to this part.

(1) The Agency will notify the lender in writing of its decision.

(2) In the evaluation of the application, the Agency may require the lender to obtain additional assistance in those areas where the lender does not have the requisite expertise to originate or service the loan. For the purposes of this paragraph "those areas" mean:

(i) The type and complexity of the financing (e.g., asset based financing, cash flow financing, bond financing), and

(ii) The industries with which the lender has little or no origination and/or servicing experience.

(c) *Loan approval and issuing the guarantee.* Complete applications from preferred lenders will be approved, subject to the availability of funds, or rejected not later than 10 business days after receipt. For the purpose of determining the application processing timeframes, an application will not be considered complete until all information required

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to make an approval decision, including a completed environmental review, is received by the Agency.

§5001.12 Application for Loan Guarantee Content.

All loan guarantee applications must contain the information specified in paragraph (a) of this section for approved lenders and in paragraph (b) of this section for preferred lenders.

(a) *Approved lender loan guarantee applications.* Loan guarantee applications from approved lenders must contain the following:

- (1) Agency-approved application forms;
- (2) Lender's analysis and credit evaluation (conforming to §5001.16(b));
- (3) Environmental information required by the Agency to conduct its environmental reviews (as specified in §5001.16(h));
- (4) Technical reports, energy audits, and energy assessments (as specified in subpart B of this part);
- (5) Appraisals acceptable to the Agency, if available;
- (6) Business plan, unless the information is contained in the feasibility study or in the lender's analysis;
- (7) Feasibility study (as specified in subpart B);
- (8) If the application is for 5 or more residential units, including nursing homes and assisted-living centers, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3);
- (9) Current credit reports or equivalent on the borrower and any other person liable for the debt, except for public bodies;
- (10) Financial statements as follows:
 - (i) For borrowers that have been in existence for one or more years,
 - (A) The most recent audited financial statements of the borrower if the guaranteed loan is \$3 million or more, unless alternative financial statements are authorized by the Agency; or
 - (B) The most recent audited or Agency-acceptable financial statements of the borrower if the guaranteed loan is less than \$3 million.
 - (ii) For borrowers that have been in existence for less than one year, the most recent Agency-authorized financial statements of the borrower regard-

less of the amount of the guaranteed loan request.

(iii) Depending on the complexity of the project and the financial condition of the borrower, the Agency may request additional financial statements and additional related information; and

(11) Any other information as determined by the Agency is necessary to evaluate the application.

(12) If the lending entity is not yet an approved lender, the application for lender approval specified in §5001.9(b) or (c), as applicable.

(b) *Preferred lender loan guarantee applications.* Loan guarantee applications from preferred lenders must contain the following:

- (1) A copy of the Application for Loan Guarantee;
- (2) Information sufficient for the Agency to confirm project and borrower eligibility;
- (3) A copy of lender's loan evaluation and analysis;
- (4) An internal loan approval document showing approval by in-house appropriate office/committee; and
- (5) Environmental information required by the Agency to conduct its environmental reviews (as specified in §5001.16(h)).

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BASIC LENDER PROVISIONS

§5001.15 Lender responsibilities—General.

(a) Lenders must ensure that proposals for facilities seeking a guarantee under this part comply with all Federal, State, and local laws and regulatory rules that are in existence and that affect the project, the borrower, or lender activities.

(b) Any lender involved in any manner with any guarantee under this part must cooperate fully with all oversight and monitoring efforts of the Agency or its representatives as specified in §5001.4.

(c) Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities to originate and service the loan guaranteed under this part.

(d) The lender must notify the Agency of any changes to its loan origination and servicing policies and procedures provided under § 5001.9(a). For any changes to the lender's loan origination and servicing policies and procedures that are inconsistent with the requirements of this part, the lender must notify the Agency in writing and receive written Agency approval prior to applying the changes to loan guarantees under this part.

(e) The lender must compile and maintain in its files a complete application for each guaranteed loan for at least one year after the final loss has been paid.

(f) The lender must maintain internal audit and management control systems to evaluate and monitor the overall quality of its loan origination and servicing activities.

§ 5001.16 Lender responsibilities—Origination.

(a) *General.* The lender is responsible for originating all loans in accordance with its loan origination policies and procedures at the time the loan is made and with the requirements of this part. Where a lender's loan origination policies and procedures address a corresponding requirement in this part, the lender must comply with whichever is more stringent, unless otherwise approved by the Agency.

(1) The Agency may require, at its discretion, an independent credit risk analysis (e.g., a credit rating or assessment).

(2) The lender must provide the Agency the lender's classification of the loan no later than 90 days after loan closing.

(b) *Credit evaluation.* For all applications for guarantee, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part and with the policies and procedures of the lender submitting the application. Where a lender's policies and procedures address a corresponding requirement in this part, the lender must comply with whichever is more stringent, unless otherwise provided in paragraph (a) of this section. An acceptable credit evaluation must:

(1) Use credit documentation procedures and an underwriting process that

are consistent with generally accepted commercial lending practices, and the lender's own policies, procedures, and lending practices, and

(2) Include an analysis of the credit factors associated with each guarantee application to ensure loan repayment, including consideration of each of the following five elements.

(i) *Credit worthiness.* Those financial qualities that generally impel the borrower to meet its obligations as demonstrated by its credit history.

(ii) *Cash flow.* A borrower's ability to produce sufficient cash to repay the loan as agreed.

(iii) *Capital.* The financial resources that the borrower currently has and those it is likely to have when payments are due. The borrower must be adequately capitalized.

(iv) *Collateral.* The assets pledged by the borrower in support of the loan. Adequacy will be based on market value. For the purchase of cooperative stock, the lender must at least secure the loan with a lien on the stock acquired with loan funds, an assignment of any patronage refund, and the full and unconditional personal, partnership, or corporate guarantee of the borrower.

(v) *Conditions.* The general business environment and status of the borrower's industry.

(c) *Appraisals.* Lenders are required to provide real property and chattel collateral appraisals conducted by an independent qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices or successor standards. Complete appraisals must be submitted to the Agency before loan closing.

(1) All appraisals used to establish the fair market value of the real property must not be more than 1 year old.

(2) All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral as determined in accordance with the appropriate ASTM Real Estate Assessment and Management environmental standards.

(d) *Personal, partnership, and corporate guarantees.*

(1) Secured, unconditional personal, partnership, and corporate guarantees may be used to determine the security of the loan. Unsecured, unconditional personal, partnership, and corporate guarantees will not be considered in determining whether a loan is adequately secured for loan making purposes.

(2) Agency-approved, unsecured personal, partnership, and corporate guarantees for the full term of the loan and at least equal to the guarantor's percent interest in the borrower, times the loan amount are required from those owning greater than a 20% interest in the borrower, unless the lender documents to the Agency's satisfaction that collateral, equity, cash flow, and profitability indicate an above-average ability to repay the loan. When warranted by an Agency assessment of potential financial risk, Agency-approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20% interest in the borrower) and require security for any guarantee provided under this section. Exceptions to the requirement for personal guarantees must be requested by the lender and approved by the Agency on a case-by-case basis. The lender must document that collateral, equity, cash flow, and profitability indicate an above-average ability to repay the loan.

(3) The guarantors will execute an Agency-approved unconditional guarantee form.

(i) Any amounts paid by the Agency on account of liabilities of an Agency guaranteed loan borrower will constitute a Federal debt owed to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower.

(ii) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a third-party guarantor of the loan, to the extent of the amount of the third-party guarantee. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to

collect the debt from the third-party guarantor.

(iii) In all instances under paragraphs (d)(3)(i) and (ii) of this section, interest charges will be assessed in accordance with 7 CFR 1951.133.

(e) *Design requirements.* The lender must ensure that all projects are designed utilizing accepted architectural and engineering practices, taking into consideration any Agency comments when the facility is being designed, and conform to applicable Federal, State, and local codes and requirements or other Agency-approved code. The lender must also ensure that the planned project will be fully constructed, within the approved budget, to facilitate completion of the loan purpose and will be suitable, once completed, for the borrower's needs in accordance with the borrower's loan application.

(f) *Monitoring requirements.* The lender must monitor the progress of construction and ensure that construction conforms to applicable Federal, State, and local code requirements and proceeds in accordance with the approved plans, specifications, and contract documents. The lender must also ensure that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(g) *Compliance with other Federal laws.* Lenders must comply with other applicable Federal laws including Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964.

(h) *Environmental responsibilities.* The lender must ensure that the borrower has:

(1) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with subpart G of either 7 CFR part 1940 or 7 CFR part 1794 or successor regulations, including the provision of all required Federal, State, and local permits;

(2) Complied with any mitigation measures required by the Agency; and

(3) Not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be

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considered during the Agency's environmental review process or which would have an adverse effect on the environment.

(i) *Conflicts of interest.* The lender must report to the Agency all conflicts of interest and appearances of conflicts of interest.

(j) *Surety.* Surety will be required in cases when the guarantee will be issued prior to completion of construction unless the contractor will receive a lump sum payment at the end of work. Surety will be made a part of the contract, if the applicant requests it or if the contractor requests partial payments for construction work. In such cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required to cover the work.

§ 5001.17 Lender's responsibilities—Servicing.

(a) *General.* The lender is responsible for servicing the loan in accordance with the Lender's Agreement, this part, and its loan servicing policies and procedures. Where a lender's loan servicing policies and procedures address a corresponding requirement in this part or in the Lender's Agreement, the lender must comply with whichever is more stringent, unless otherwise approved by the Agency.

(1) The lender must ensure that the borrower has obtained, and will maintain for the life of the loan, all necessary insurance coverage appropriate to the proposed project.

(2) If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(b) *Certification.* The lender will certify in the Lender's Agreement that it will service the guaranteed loan according to Agency requirements and the lender's servicing policies and pro-

cedures and that, where the lender's policies and procedures address corresponding requirements of this part, it will comply with whichever is more stringent, unless otherwise provided in paragraph (a) of this section.

(c) *Audits.* When applicable, the lender will require an audit of the borrower in accordance with Office of Management and Budget requirements.

(d) *Financial reports.* Lenders are required to submit financial reports of the borrower as specified in paragraphs (d)(1) and (d)(2) of this section.

(1) For regulated or supervised lenders, the information that would be contained in financial reports required by the appropriate regulatory institution. Unless otherwise provided in the Conditional Commitment, such information must be submitted at the same time it should be made available to the appropriate regulatory institution.

(2) For other lenders, financial reports as required in the Conditional Commitment.

(e) *Collateral inspection and release.* The lender must inspect the collateral as often as necessary to properly service the loan. The Agency will require prior approval of the release of collateral, except in those instances where the proceeds are used to pay down debt in order of lien priority, or to acquire replacement equipment, or where the release of collateral is made under the abundance of collateral provision of the applicable security agreement. Appraisals on the collateral being released will be required on all transactions exceeding \$250,000 and will be at the expense of the borrower. The appraisal must meet the requirements of § 5001.16(c). The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved by the Agency in writing.

(f) *Transfers and assumptions.*

(1) *General.* Any time that a third party assumes a loan guaranteed under this part, it shall be processed and approved by the Agency as if it were a new loan guarantee.

(2) *Processing transfers and assumptions.* Subject to Agency approval, the lender may release the transferor (including any guarantor) from liability, regardless of the amount of the loan being transferred or assumed.

(i) Loan terms cannot be changed unless previously approved in writing by the Agency with the concurrence of the holder and transferor (including guarantor if it has not been released from personal liability). Any new loan term cannot exceed those authorized in this part as measured from the date the loan was initially guaranteed.

(ii) In the case of a transfer and assumption of less than the outstanding balance, the lender (if holding the guaranteed portion) may file an estimated Report of Loss with respect to the difference.

(iii) The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(3) *Transfer fees.* The Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency will set the amount of the transfer fee in an annual notice of funds availability.

(g) *Mergers.* All borrower mergers require prior approval by the Agency and the lender. If a borrower merges without Agency approval, the lender must accelerate the loan unless subsequently agreed to in writing by the Agency.

(h) *Subordination of lien position.* A subordination of the lender's lien position must be requested in writing by the lender and concurred with in writing by the Agency in advance of the subordination. Agency concurrence requires that:

(1) The subordination be in the best financial interest of the Agency;

(2) The lien to which the guaranteed loan is subordinated is for a fixed dollar limit;

(3) Lien priorities remain for the portion of the loan that was not subordinated; and

(4) The subordination of line of credit does not extend the term of the line of credit and in no event exceeds more than 3 years.

(i) *Repurchases from holder(s).* The holder may make written demand on the lender or the Agency to repurchase the unpaid guaranteed portion of the loan in the case of borrower monetary default or failure of the lender to pay the holder its pro-rata share. When the lender and the Agency determine that repurchase is necessary to adequately service the loan, the holder must sell the guaranteed portion to the requesting entity.

(1) *Repurchases by lender.* The lender must respond to the holder's demand within 30 days and will notify the Agency in writing of its decision, including notifying the Agency in writing of all repurchases it makes. When repurchased, the lender will accept an assignment without recourse from the holder upon repurchase. All repurchases must be for an amount equal to the holder's interest in the unpaid principal balance of the guaranteed portion and accrued interest less the lender's servicing fee and cover the principal and interest on the guaranteed loan accruing only up to 90 days after the date of the demand by the holder.

(2) *Repurchase by lender for servicing.* If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder will sell the portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter of the lender or the Agency to the holder requesting the holder to tender its guaranteed portion.

(i) The lender will not repurchase from the holder for arbitrage purposes or other purposes to further its own financial gain.

(ii) Any repurchase will only be made after the lender obtains Agency written approval.

(iii) If the lender does not repurchase the portion from the holder, the Agency at its option may purchase such guaranteed portions for servicing purposes.

(3) *Repurchases by Agency.* When the Agency repurchases the loan, the holder must submit a specific written demand to the Agency, along with appropriate documentation. The Agency will be subrogated to all rights of the holder and, subject to satisfactory documentation, will purchase the unpaid principal and interest of the guaranteed portion to date of repurchase less the lender's servicing fee within 30 days after receipt of the demand. The lender may not charge the Agency any fees.

(i) The lender shall use a form approved by the Agency to send the guaranteed loan repayments to the Agency on all loans repurchased by the Agency from holders.

(ii) Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee and does not waive any of the Agency's rights against the lender, borrower, or guarantor.

(iii) All repurchases must be for an amount equal to the holder's interest in the unpaid principal balance of the guaranteed portion and accrued interest less the lender's servicing fee and cover the principal and interest on the guaranteed loan accruing only up to 90 days after the date of the demand by the holder.

(j) *Additional expenditures and loans.* The lender may make additional expenditures or new loans to a borrower with an outstanding loan guaranteed under this part without obtaining prior written Agency approval unless the expenditure or loan will violate one or more of the loan covenants of the borrower's loan agreement.

(k) *Lender failure.* In the event a lending institution fails or ceases servicing the loan, the Agency will provide instruction to the successor entity on a case-by-case basis. Such instructions may include that the Agency may determine to service the entire loan or the guaranteed portion of the loan. In the event no successor entity can be determined, the Agency reserves the

right to enforce the provisions of the loan documents on behalf of the lender or to purchase the lender's interest in the loan.

(l) *Delinquent loans.* The lender must service delinquent loans in accordance with the Lender's Agreement, its current servicing standards, and reasonable and prudent lending standards. If a borrower is delinquent more than 30 days, the lender must implement appropriate curative actions to resolve the problem. Any curative action that affects the return to the holder must receive the holder's concurrence. Any change in the repayment schedule must be limited to the remaining life of the collateral. Any loan performing in accordance with a curative action will no longer be delinquent.

(m) *Protective advances.* The following conditions apply to protective advances associated with guaranteed loans under this part.

(1) Protective advances are allowed only when they are necessary to preserve the value of the collateral and must be reasonable with respect to the outstanding loan amount and the value of the collateral being preserved.

(2) Protective advances will not include attorneys' fees or advances in lieu of additional loans.

(3) The lender must obtain written Agency approval for any protective advance that will singularly or cumulatively amount to more than \$200,000 or 10% of the guaranteed loan, whichever is less.

(4) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments.

(5) Notwithstanding § 5001.7(j), upon Agency approval, protective advances can be used to pay Federal tax liens and other Federal debt.

(6) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(7) The maximum loss to be paid by the Agency will be determined according to the procedures specified in § 5001.17(p)(1) regardless of any protective advances made.

(n) *Liquidation.* The lender may liquidate a loan when one or more incidents of default or third party actions occur that the borrower cannot or will not cure or eliminate within a reasonable period of time. The Agency reserves the right to unilaterally conclude that liquidation is necessary and require the lender to assign the security instruments to the Agency and the Agency will then liquidate the loan.

(1) *Liquidation by the lender.* The lender must develop, in consultation with the Agency, a liquidation plan to determine the best course of action. The plan must include all aspects of liquidation, including, but not limited to reports to, the Agency, protection of collateral, loss payment, transmission of proceeds to the Agency, and future recovery.

(i) *Liquidation plan.* The lender must submit its liquidation plan to the Agency for approval at least 30 days before implementing the plan. The Agency will approve or disapprove the plan within 30 days. Upon approval of the liquidation plan by the Agency, the lender may implement the plan. The Agency must be notified of any changes to or deviations from the plan.

(ii) *Appraisals.* Liquidation appraisals must be a part of the liquidation planning process. They are not required for liquidation plan approval, provided they are obtained prior to the completion of the liquidation. If the outstanding principal loan balance including accrued interest is more than \$200,000, the lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value.

(iii) *Appraisal costs.* Any independent appraiser's fee will be shared equally by the Agency and the lender. If an environmental site assessment in accordance with the appropriate ASTM Real Estate Assessment and Management environmental standards of the property is necessary in connection with liquidation, the cost will be shared equally between the Agency and the lender.

(iv) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(2) *Compromise settlement and release of personal guarantors.* A compromise settlement may be considered at any time. Before a guarantor is released from liability, the Agency must concur with the lender. Upon agreement, the lender may proceed to effect a compromise settlement.

(o) *Litigation.* In all litigation proceedings involving the borrower, the lender is responsible for protecting the rights of the lender or the Agency with respect to the loan, and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender, on behalf of the lender, or the Agency with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(p) *Loss calculations and payment.* Estimated losses are calculated from principal and accrued interest. From this amount deduct prior liens, net value of collateral, and other funds. Final losses include principal, protective advances, and accrued interest minus any estimated loss paid.

(1) The maximum loss allowed is the lower of:

(i) Any loss sustained by the lender on the guaranteed portion including:

(A) Principal and interest indebtedness as evidenced by said notes or by assumption agreements, and

(B) Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with the Agency's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

(ii) The guaranteed principal advanced to or assumed by the borrower under said notes or assumption agreements and any interest due thereon.

(2) Accrued interest will be handled as specified in paragraphs (p)(2)(i) through (iv) of this section.

(i) If the Agency conducts the liquidation of the loan, loss occasioned to the lender by accruing interest after the date the Agency accepts responsibility for liquidation will not be covered by the Loan Note Guarantee.

(ii) If the lender conducts the liquidation of the loan, accruing interest shall be covered by the Loan Note Guarantee to 30 days after liquidation of collateral when the lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by the Agency.

(iii) Under no circumstances will the Agency pay more than 90 days of additional accrued interest once the liquidation plan is approved.

(iv) Upon payment of an estimated loss to the lender, interest accrual on the defaulted loan will be discontinued.

(3) During the course of any reorganization plan, the lender will request and revise estimated loss payments using Agency-approved forms. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(4) In a chapter 9 or chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if so directed by the Agency. The Agency and the lender will share the appraisal fee equally.

(5) Final settlement of liquidation will be made with the lender after the collateral is liquidated (unless otherwise designated as a future recovery) or after settlement and compromise of all parties has been completed. The Agency retains the right to recover losses paid under the guarantee from any liable party.

(i) If the lender takes title to collateral, any loss will be based on the collateral value at the time the collateral is liquidated.

(ii) When the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, the lender must submit an estimated loss claim when liquidation is expected to exceed 90 days.

(iii) Within 30 days after liquidation of all collateral, except for certain un-

secured personal, partnership, or corporate guarantees as provided for in this section, the lender must prepare a final report of loss and submit it to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before Agency approval of any final loss report, the lender must account for all funds, disposition of the collateral, and costs incurred, and must provide any other information necessary for successful completion of the liquidation.

(iv) After a final loss has been paid by the Agency, any future funds recovered by the lender will be pro-rated between the Agency and the lender based on the original percentage of guarantee even if the Loan Note Guarantee has been terminated.

(v) In a bankruptcy, the lender will submit an estimated loss claim based on the final orders of the bankruptcy court's direction. The Agency will pay the lender the estimated final loss based on these directions.

(6) In response to a loss claim, the Agency may request and the lender must provide the Agency with a copy of the applicable loan origination and servicing policies and procedures in place for the loan.

(7) When the Agency finds the final report of loss to be proper in all respects, it will approve the final loss. If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the estimated loss payment.

§§ 5001.18–5001.24 [Reserved]

BASIC BORROWER PROVISIONS

§ 5001.25 Borrower responsibilities.

(a) *Federal, State, and local regulations.* Borrowers must comply with all Federal, State, and local laws and rules that are in existence and that affect the project including, but not limited to:

- (1) Land use zoning;
- (2) Health, safety, and sanitation standards as well as design and installation standards; and
- (3) Protection of the environment and consumer affairs.

(b) *Permits, agreements, and licenses.* Borrowers must obtain all permits, agreements, and licenses that are applicable to the project.

(c) *Insurance.* The borrower is responsible for maintaining all hazard, flood, liability, worker compensation, and personal life insurance, when required, on the project.

(d) *Access to borrower's records.* Upon request by the Agency, the borrower will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any of the records of the borrower pertaining to any Agency guaranteed loan. Such inspection and copying may be made during regular office hours of the borrower or at any other time agreed upon between the borrower and the Agency.

§§ 5001.26–5001.29 [Reserved]

BASIC GUARANTEE AND LOAN PROVISIONS

§ 5001.30 General.

(a) *Underwriting.* All loans guaranteed by the Agency must be underwritten in accordance with the credit evaluation requirements specified in § 5001.16(b).

(b) *Conditions of guarantee.* A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement.

(1) The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion.

(2) The lender will remain mortgagee or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

(3) The holder of a guaranteed portion shall have all rights of payment, as defined in the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound by all obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations.

(4) The lender will receive all payments of principal and interest on the entire loan and will promptly remit to each holder a pro-rata share, less any lender servicing fee.

(5) No loan guaranteed by the Agency under this part will be conditioned on any requirement that the borrower accept or receive electric service from any particular utility, supplier, or cooperative.

(c) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation by the lender or holder, as appropriate, when the lender or holder has actual knowledge, participates in, or condones such fraud or misrepresentation.

(1) A note that provides for the payment of interest on interest will not be guaranteed. Any claim against a Loan Note Guarantee or Assignment Guarantee Agreement that is attached to, or relating to, a note that provides for payment of interest on interest will be reduced to remove the interest on interest.

(2) The guarantee will not be enforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent loan origination or servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned by the lender will not be enforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment.

(3) When in the hands of a holder, the Loan Note Guarantee or Assignment Guarantee Agreement shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender. When in the hands of a holder, the Loan Note Guarantee or Assignment Guarantee Agreement shall not cover interest accruing 90 days after the lender or Agency has requested the holder to surrender the evidence of debt for repurchase.

(4) The Agency will guarantee payment as follows:

(i) To any holder, 100% of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(ii) To the lender, the lesser of:

(A) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(B) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(d) *Soundness of guarantee.* All loans guaranteed under this part must be financially sound and feasible, with reasonable assurance of repayment.

(e) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all payments of the lender under the Loan Note Guarantee to the extent of the portion purchased. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. The lender shall not represent a Conditional Commitment as a guarantee. The Agency reserves the right to collect from the lender any payments made to the holder that would not have been payable to the lender had they been the holder.

(f) *Reduction of loss claims payable.* Negligent loan origination or servicing will result in reduction of loss claims payable under the guarantee to the lender if any losses have occurred as the result of such negligence. The extent of the reduction, which could be a total reduction, of the loss claims payable, will depend on the extent of the losses occasioned as the result of the negligent loan origination and servicing.

(g) *Write-downs.* Debt write-downs for an existing borrower where the same principals retain control of and decision-making authority for the business are prohibited.

§ 5001.31 Guaranteed loan requirements.

(a) *Interest rates.* Interest rates may be fixed or variable or a combination of both, as long as they are legal. Variable interest rates must be tied to an acceptable published index and the lender must incorporate the provision for adjustment of payment installments into the Note.

(1) *Negotiated rates.* Interest rates, interest rate caps, and incremental adjustment limitations will be negotiated between the lender and the borrower and will be subject to concurrence by the Agency.

(2) *Different rates on guaranteed and unguaranteed portion of the loan.* If the lender and borrower agree, the interest rate on the guaranteed portion of a loan may differ from the rate on the unguaranteed portion provided:

(i) The rate on the unguaranteed portion is equal to or below the market rate and does not exceed that currently being charged on loans for similar purposes to borrowers under similar circumstances; and

(ii) The rate on the guaranteed portion does not exceed the rate on the unguaranteed portion unless the rate on the guaranteed portion is fixed and the unguaranteed portion is variable.

(b) *Interest rate changes.*

(1) *General.* Any change in the interest rate between issuance of the Conditional Commitment and issuance of the Loan Note Guarantee:

(i) Must be approved in writing by the Agency, unless the only change is to the base rate of a variable interest rate;

(ii) Must be shown as an amendment to the Conditional Commitment; and

(iii) Are subject to the restrictions specified in paragraphs (b)(2) and (b)(3) of this section.

(2) *Reductions.* The borrower, lender, and holder (if any) may collectively effect a permanent or temporary reduction in the interest rate on the guaranteed loan at any time during the life of the loan by their written agreement, subject to the conditions specified in paragraphs (b)(1)(i) through (iii) of this section. The lender must keep sufficient records to allow the Agency to calculate any loss at the reduced interest rate. The lender must notify the

RBS, RHS, and RUS, USDA

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Agency of all permanent interest rate reductions, as specified in §5001.4(b)(3)(ii).

(i) After a permanent reduction, the Loan Note Guarantee will only cover losses of interest at the reduced interest rate.

(ii) In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect. The lender must maintain records that adequately document the accrued interest claimed.

(iii) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(3) *Increases.* Increases in interest rates are not permitted beyond what is provided in the loan documents. Increases from a variable interest rate to a higher interest rate that is a fixed rate are allowed, subject to concurrence by the Agency.

(c) *Term length.* The loan term will be based on the use of proceeds, the useful economic life of the assets being financed, and the borrower's repayment ability. In no event may the term exceed 40 years.

(d) *Loan schedule and repayment.* Repayment will be structured in accordance with this section and the Loan Agreement, and will be due and payable in accordance with the Note. Only loans that require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment will be guaranteed. Lenders must ensure that the principal balance of a guaranteed loan is properly amortized within the prescribed loan maturity.

(e) *Maximum loan amounts.* The maximum amount that may be guaranteed will be determined on a program-by-program basis and will be published each year in the FEDERAL REGISTER.

(f) *Maximum percent of guarantee.* The maximum guarantee is specified in subpart B of this part for each guaranteed loan program covered by this part.

(g) *Fees.* Each year, the Agency will establish, and publish in a FEDERAL REGISTER notice, the guarantee fee and renewal fee for each guaranteed loan program. A guarantee fee and a renewal fee will be assessed on each loan, as specified in the FEDERAL REGISTER notice. Both the guarantee fee and the renewal fee are nonrefundable.

(1) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender at the time the lender requests the Loan Note Guarantee. The fee may be passed on to the borrower.

(2) *Renewal fee.* As applicable, the renewal fee is assessed annually, is based on a fixed fee rate established at the time the loan is obligated, and will be calculated on the unpaid guaranteed principal balance as of close of business on December 31 of each year. The fee will be billed to the lender and may be passed on to the borrower.

(h) *Lender fees.* The lender may levy reasonable, routine, and customary charges and fees, including late payment fees, for the guaranteed loan provided they are similar to those charged other borrowers for the same type of loan for which a non-guaranteed borrower would be assessed. Default charges, late payment charges, and additional interest expenses will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note.

§5001.32 Conditional commitment.

Upon approval of a loan guarantee application, the Agency will issue a Conditional Commitment to the lender containing conditions under which the Loan Note Guarantee will be issued.

(a) The lender shall certify in the Conditional Commitment that:

(1) The lender will monitor construction in accordance with approved plans and specifications, and

(2) Project funds will be used only for Agency-approved project costs.

(b) The lender may propose alternate conditions for Agency consideration.

(c) The lender must complete and sign the Acceptance of Conditions and return a copy to the Agency.

§ 5001.33 Conditions precedent to issuance of loan note guarantee.

Each of the conditions specified in paragraphs (a)(1) through (17) of this section must be met prior to the Agency's issuance of a Loan Note Guarantee under § 5001.34.

(a) The lender must certify in writing to each of the following conditions.

(1) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency in writing.

(2) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications, conforms with applicable Federal, state, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(3) Required hazard, flood, liability, worker compensation, and personal life insurance, when required, are in effect.

(4) All truth-in-lending and equal credit opportunity requirements have been met.

(5) The loan has been properly closed, and the required security instruments have been obtained or will be obtained on any acquired property that cannot be covered initially under State law.

(6) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(7) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time. In line of credit cases, if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the Conditional Commitment and line of credit agreements.

(8) When required, personal, partnership, or corporate guarantees have been obtained.

(9) All requirements of the Conditional Commitment have been met.

(10) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens

of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

(11) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and the Application for Loan Guarantee. A copy of the detailed loan settlement of the lender must be attached to support this certification. Appropriate lender controls were utilized to ensure that all funds were properly disbursed, including funds for working capital.

(12) There has been no material change in the borrower's financial condition and no other adverse material change in the borrower during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all material changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(13) None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stock share requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System institution that is the lender, the lender will certify that a Farm Credit System institution on the next highest level will independently process the loan request and act as the lender's agent in servicing the account.

(14) The Loan Agreement includes all measures identified in the Agency's environmental impact analysis for this proposal (measures with which the borrower must comply) for the purpose of

avoiding or reducing adverse environmental impacts of the proposal's construction or operation.

(15) For loans exceeding \$150,000, the lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(16) Where applicable, the lender must certify that the borrower has obtained:

(i) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation and maintenance of a facility.

(ii) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restriction or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a gas distribution system) and the lender and borrower are able to obtain only a right-of-way or easement on such site rather than a fee simple title, such a title opinion must be requested.

(17) The minimum financial criteria for a program for which a loan application has been submitted, including those financial criteria contained in the Conditional Commitment, have been maintained through the issuance of the Loan Note Guarantee. Failure to maintain these financial criteria shall result in an ineligible application.

(b) If the lender is unable to provide any of the certifications in paragraphs (a)(1) through (17) of this section, the lender must provide an explanation satisfactory to the Agency as to why the lender is unable to provide the certification.

§ 5001.34 Issuance of the guarantee.

The Agency, at its sole discretion, will determine if the conditions within the Conditional Commitment have been met. The Agency, at its sole discretion, will determine whether or not to issue the guarantee.

(a) *Loan agreement.* The lender must submit to the Agency a copy of the loan agreement between the lender and the borrower prior to loan closing.

(b) *Requesting guarantee.* The lender must provide the lender's certification and the guarantee fee at the time it requests the Loan Note Guarantee.

(c) *Issuance.* Upon the lender's compliance with requirements of the Conditional Commitment and certification in accordance with § 5001.33(a), the Agency will issue the Loan Note Guarantee.

(d) *Refusal to execute Loan Note Guarantee.* If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(e) *Replacement of Loan Note Guarantee or Assignment Guarantee Agreement.* If the Loan Note Guarantee or Assignment Guarantee Agreement has been lost, stolen, destroyed, mutilated, or defaced, the Agency may issue a replacement to the lender or holder upon receipt from the lender of a notarized certificate of loss and an indemnity bond acceptable to the Agency. If the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or Territory, or the District of Columbia, an indemnity bond is not required.

§ 5001.35 Alterations of loan instruments.

Under no circumstances shall the lender alter or approve any alterations

§ 5001.36

of the Loan Note Guarantee or any other loan instrument without the prior written approval of the Agency.

§ 5001.36 Reorganizations.

(a) *Change in borrower prior to closing.* Any change in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet program eligibility requirements and be approved by the Agency prior to the issuance of the Conditional Commitment. Once the Conditional Commitment is issued, no substitution of borrower(s) or change in the form of legal entity will be approved, unless Agency approval, in writing, is obtained.

(b) *Transfer of lender prior to issuance of the Loan Note Guarantee.* Prior to issuance of a Loan Note Guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment to another lender, provided no material changes have occurred in the borrower, project, or loan agreement.

(1) The present lender must submit the requested transfer in writing to the Agency and the Agency must approve the transfer.

(2) The other lender must be approved under this part.

(3) The other lender must execute a new application for guarantee in conformance with this part. If the transfer is from a preferred lender to an approved lender, the approved lender must submit an application in accordance with the requirements specified in § 5001.12(a).

(c) *Substitution of lender after issuance of the Loan Note Guarantee.* After the issuance of a Loan Note Guarantee, the lender shall not be substituted without the prior written approval of the Agency. A substitution of the lender must be requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence. The Agency may approve the substitution of a lender if the new lender is Rural Development approved; agrees in writing to acquire title to any unguaranteed portion of the loan held by the original lender; and assumes all original loan requirements and lender responsibilities. The Agency will not pay any loss or share in any costs with a lender who is not in compliance with this section.

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§ 5001.37 Sale or assignment of guaranteed loan.

(a) *General.* The lender may sell part of the guaranteed portion of the loan, subject to the conditions specified in paragraphs (a)(1) through (5) of this section.

(1) Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the Lender's Agreement.

(2) The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain a minimum of 5% of the total loan amount in its portfolio. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated.

(3) The lender must not sell or participate any amount of the guaranteed, or non-guaranteed, portion of the loan to the borrower or members of the borrower's immediate family, the borrower's officers, directors, stockholders, other owners, or a parent, subsidiary, or affiliate.

(4) Disposition of the guaranteed portion of a loan may not be made prior to full disbursement, completion of construction, and acquisition of real estate and equipment without the prior written approval of the Agency.

(5) If the lender desires to sell all or part of the guaranteed portion of the loan subsequent to loan closing, the loan must not be in monetary default.

(b) *Servicing fee.* The lender cannot charge the Agency a servicing fee and no such fees are covered under the guarantee.

(c) *Distribution of proceeds.* All loan payments and collateral proceeds received will be applied to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

§ 5001.38 Termination of loan note guarantee.

Each Loan Note Guarantee issued under this part will terminate automatically upon:

(a) Full payment of the guaranteed loan; or

(b) Full payment of any loss obligation or negotiated loss settlement except for future recovery provisions and payments made as a result of the Debt

Collection Improvement Act of 1996. After final payment of claims to lenders and/or holders, the Agency will retain all funds received as the result of the Debt Collection Improvement Act of 1996; or

(c) Written request from the lender to the Agency that the guarantee will terminate 30 days after the date of the request, provided that the lender holds all of the guaranteed portion, and the original Loan Note Guarantee is returned to the Agency to be canceled.

§§ 5001.39–5001.100 [Reserved]

Subpart B—Program-Specific Provisions

§5001.101 Community Facilities Program.

(a) *Project eligibility.* To be eligible for a Community Facility guaranteed loan, the project must meet the criteria specified in paragraphs (a)(1) through (5) of this section and in §5001.6, except as provided in paragraph (a)(6) of this section.

(1) *Eligible projects.* All loans guaranteed with community facility funding shall be for:

- (i) Essential community facilities;
- (ii) Community services or community-based social, recreational or cultural services;
- (iii) Transportation infrastructure and support;
- (iv) Hydroelectric generating facilities or supplemental and supporting structures for rural electrification only with advance written approval from the Agency;
- (v) Natural gas distribution systems;
- (vi) Acquisition of land and site preparation for industrial parks;
- (vii) Refinancing debts (excluding working capital debt, operating or other debt whose repayment is scheduled to take place in one year or less). Refinancing debts incurred by, or on behalf of, an eligible borrower is allowed when all of the following conditions exist:

(A) The debts being refinanced are less than 50% of the total loan;

(B) The debts were incurred for the facility or service being financed or any part thereof (such as interim fi-

nancing, construction expenses, etc.); and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan; or

(viii) Notwithstanding §5001.7(e), a leasehold interest is eligible for funding as determined by the Agency. At a minimum,

(A) The length of lease must be greater than or equal to loan term;

(B) There are no reverter clauses in the lease; and

(C) There are no restrictive clauses that would impair the use or value of the property as security for the loan.

(2) *Facilities for public use.* All facilities financed under the provisions of this section shall be for public purposes.

(i) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(ii) The lender will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (e.g., gas distribution systems) will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

(3) *Leased space.* A facility will remain eligible for Community Facility funding provided:

(i) The facility has less than 25% of its floor space occupied by ineligible organizations or activities; and

(ii) The ineligible organization and the ineligible commercial activity are related to and enhance the primary purpose for which the facility is being established by the borrower.

(4) *Facility location.* Facilities must be located in rural areas, except as follows:

(i) For utility services, such as natural gas or hydroelectric, serving both rural and non-rural areas, Agency funds may be used to finance only that

portion serving rural areas, regardless of facility location.

(ii) For telecommunication projects, the part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

(5) *Serve rural area.* The project must primarily serve a rural area.

(6) *Demonstration of community support.* A project may demonstrate community support in lieu of the debt-to-tangible net worth ratio required under § 5001.6(b)(2) and in lieu of the loan-to-value ratio required under § 5001.6(b)(3).

(i) Evidence of community support in the form of a certification of support for each project or facility from any affected local government body is required.

(ii) With the exceptions of essential community facilities owned by a local public body or a Federally-recognized Indian tribe serving local residents or tribal members, a certificate of support must be obtained from each affected local government within the service area of the facility. The certificate of support must be signed by an authorized official of the local government.

(iii) The certificate of support should include sufficient information to determine that a community facility will provide needed services to the community and will have no adverse impact on other community facilities providing similar services. The organization is required to provide sufficient information to affected local governments as may be needed to obtain the certificate of support.

(b) *Unauthorized projects and purposes.* Loan funds may not be used to finance:

(1) Facilities that are 25% or more for the purpose of housing Federal or State agencies;

(2) Community antenna television services or facilities;

(3) Telephone systems;

(4) Facilities that are not modest in size, design, and cost;

(5) Racetracks, water parks, and ski slopes.

(c) *Borrower eligibility.* In addition to the requirements specified in subpart A of this part, an eligible borrower must also meet the following requirements where applicable:

(1) *Borrowers.* An eligible borrower must be:

(i) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area;

(ii) A not-for-profit entity such as an association, cooperative, or private corporation; or

(iii) An Indian tribe on Federal and State reservations and other federally recognized Indian tribes.

(2) *Other eligible borrowers.* The following organizations are also eligible borrowers under this subpart: The YMCA, YWCA, Girl Scouts, and Boy Scouts.

(3) *Community ties.* A private not-for-profit essential community facility (other than utilities) must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community.

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(4) *Credit not available elsewhere.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time.

(d) *Additional application documentation provisions.* In addition to the application requirements specified in § 5001.12, lenders shall submit the following as applicable:

(1) *Feasibility study.* A feasibility study by a qualified consultant may be required by the Agency.

(2) *Organizational documents.* A copy of the complete organizational documents of the borrower.

(3) *Board members.* A complete list of governing board members of the borrower.

(4) *Management agreement and other legal documents.* A copy of the management agreement and other legal documents between the borrower and the proposed management company.

(5) *Preliminary architectural report.* A preliminary architectural report conforming to customary professional standards. This report may be submitted to the Agency prior to the balance of the application material if a preliminary review by the Agency is desired.

(e) *Additional application processing requirements—appraisals.* When a loan's collateral appraises at a level less than 100% of the loan amount, the Agency will consider community support in evaluating the application for guarantee.

(f) *Additional origination responsibilities—leasehold interest.* Subject to approval by the Agency, a leasehold interest may be used as collateral for loans under this section provided the leasehold interest meets each of the conditions specified in paragraphs (a)(1)(viii)(A) through (C) of this section.

(g) *Additional servicing responsibilities—financial reports.* Annual financial reports required shall conform to 7 CFR part 3052.

(h) *Additional guarantee- and loan-related requirements.*

(1) *Funding limit.* The principal amount of a Community Facility loan guaranteed under this section may not exceed \$50 million.

(2) *Maximum percent of guarantee.* The maximum loan guarantee issued to a Rural Development approved lender with Community Facilities funding is 90%.

(3) *Parity lien requirements.* Whenever both a Community Facilities guaranteed loan and a Community Facilities direct loan are utilized to finance a single project, the Agency will require a parity lien, unless the lender cannot meet its regulatory requirements.

§ 5001.102 Water and Waste Disposal Facilities Program.

(a) *Project eligibility.* To be eligible for a Water and Waste Disposal Facilities

guaranteed loan, the project must meet the criteria specified in paragraphs (a)(1) through (3) of this section and in § 5001.6, except as provided in paragraph (a)(4) of this section.

(1) *Eligible projects and costs.* All loans guaranteed with Water and Waste Disposal funding shall be for:

(i) A water, waste disposal, solid waste disposal or storm water facility;

(ii) Payment of other utility connection charges as provided in service contracts between utility systems; or

(iii) Refinancing any loan. Except for the refinancing of Agency direct loans, refinancing of other loans will be limited to a minority portion of the guaranteed loan.

(2) *Facilities for public use.* All facilities financed under the provisions of this section shall be for public purposes.

(i) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(ii) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

(3) *Serve rural area.* The project must primarily serve a rural area.

(4) *Demonstration of community support.* A project may demonstrate community support in lieu of the debt-to-tangible net worth ratio required under § 5001.6(b)(2) and in lieu of the loan-to-value ratio required under § 5001.6(b)(3). Demonstration of community support shall be made as specified in § 5001.101(a)(6)(i) through (iii).

(b) *Unauthorized projects and purposes.* Loan funds may not be used to finance:

(1) Facilities that are not modest in size, design, and cost;

(2) The construction of any new combined storm and sanitary sewer facilities;

(3) Any portion of the cost of a facility that does not serve a rural area;

(4) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment;

(5) Rental for the use of equipment or machinery owned by the borrower;

(6) Any project where an individual, or membership of another organization sponsors the creation of a nonprofit organization with the intent to control negotiations for employment or contracts that provide financial benefit to the sponsoring organization, affiliate organization, or a subsidiary organization of the sponsoring individuals or organization; or

(7) For other purposes not directly related to operating and maintenance of the facility being installed or improved.

(c) *Borrower eligibility.* To be eligible for a Water and Waste Disposal Facilities guaranteed loan, a borrower must meet the criteria specified in paragraphs (c)(1) and (2) of this section and in § 5001.8(a)(1) and (2).

(1) *Eligible entity.* The borrower must be one of the following types of entities:

(i) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area;

(ii) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(iii) An Indian tribe on a Federal or State reservation or any other Federally-recognized Indian tribe.

(2) *Credit not available elsewhere.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time.

(d) *Additional lender approval requirements.* The examination required under § 5001.9(c)(1)(iv) may be conducted by the Agency or a qualified consultant.

(e) *Additional application documentation provisions.* In addition to the application requirements specified in § 5001.12, lenders shall submit the following as applicable:

(1) *Feasibility study.* A feasibility study by a qualified consultant may be required by the Agency.

(2) *Preliminary engineering report.* Two copies of the preliminary engineering report are to be submitted. Preliminary engineering reports must conform to customary professional standards. Preliminary engineering report guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. The preliminary engineering report may be submitted to the Agency prior to the rest of the application material if a preliminary review by the Agency is desired.

(3) *Organizational documents.* A copy of the complete organizational documents of the borrower.

(4) *Board members.* A complete list of governing board members of the borrower.

(5) *Management agreement and other legal documents.* A copy of the management agreement and other legal documents between the borrower and the proposed management company.

(6) *Intergovernmental consultation.* Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(f) *Additional lender servicing responsibilities—financial reports.* Annual financial reports required shall conform to 7 CFR part 3052.

(g) *Additional guarantee- and loan-related requirements—maximum percent of guarantee.* The maximum loan guarantee issued to a Rural Development approved lender with Water and Waste Disposal Facility funding is 90%.

§ 5001.103 Business and Industry Program.

(a) *Definitions.*

Locally or regionally produced agricultural food product. Any agricultural food product that is raised, produced, and distributed in:

(i) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(ii) The State in which the product is produced.

Underserved community. A community (including an urban or rural community and an Indian tribal community) that has, as determined by the Secretary:

(i) Limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets; and

(ii) A high rate of hunger or food insecurity or a high poverty rate.

(b) *Project eligibility.* To be eligible for a Business and Industry guaranteed loan, the project must meet the criteria specified in paragraphs (b)(1) through (b)(3) of this section, as applicable, and in § 5001.6.

(1) The project must be located in a rural area.

(2) All loans guaranteed with Business and Industry funding shall be for:

(i) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities;

(ii) Business conversion, enlargement, repair, modernization, or development;

(iii) The purchase and development of land, easements, rights-of-way, buildings, or facilities;

(iv) The purchase of equipment, leasehold improvements, machinery, supplies, inventory, start up costs, working capital, pollution control and abatement, or feasibility studies;

(v) Transportation services incidental to industrial development;

(vi) Agricultural production, with advance written approval from the Agency, when it is not eligible for Farm Service Agency farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products;

(vii) The purchase of membership, stocks, bonds, or debentures or, as allowed under paragraph (a)(3) of this section, cooperative stock;

(viii) Commercial fishing, aquaculture, commercial nurseries, forestry, hydroponics, or the growing of mushrooms;

(ix) Interest during the period before the first principal payment becomes

due or when the facility becomes income producing, whichever is earlier;

(x) Refinancing any loan when the Agency determines that the project is viable and equal or better rates or terms are offered. Same lender debt refinancing will be additionally required to be less than 50% of the new loan amount unless the amount of the loan to be refinanced is already Federally guaranteed. Subordinated owner debt is not eligible;

(xi) Providing takeout of interim financing when the lender submits a pre-application or a complete application in which the interim financing is proposed, prior to extending any portion of the interim loan;

(xii) Fees and charges for professional services (except for packager and broker fees) and routine lender fees and the Agency guarantee fee;

(xiii) Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments when the owner's living quarters is not included in the guaranteed loan;

(xiv) Educational, training, or community facilities;

(xv) Housing development sites with Agency-approved restrictions;

(xvi) Community antenna television services or facilities;

(xvii) Industries adjusting to terminated Federal agricultural programs or increased foreign competition;

(xviii) Mixed use commercial and residential buildings on a pro-rata basis (residential real estate use portion not eligible);

(xix) Notwithstanding § 5001.7(e), operating lines of credit that are part of an overall guaranteed loan financing package under this section and that are used for the payment of one or more of the following:

(A) Annual operating/business expenses;

(B) Debts advanced for the current operating cycle, excluding carry-over debt from previous operating cycles;

(C) Scheduled, non-delinquent term borrower debt; or

(D) Closing costs; or

(xx) Leasehold improvements, provided the underlying lease meets the requirements specified in § 5001.101(a)(1)(viii);

(xxi) The purchase of preferred stock or similar equity issued by a cooperative organization or a fund that invests primarily in cooperative organizations, if the guarantee significantly benefits one or more entities eligible for assistance for the purposes described in paragraph (d) of this section; or

(xxii) Establish and facilitate enterprises that process, distribute, aggregate, store, and market locally or regionally produced agricultural food products to support community development and farm and ranch income.

(3) *Purchase of cooperative stock.* Loans may be made to individual farmers or ranchers for the purchase of cooperative stock. The entity to receive the proceeds from the stock sale must be a farmer or rancher cooperative established for the purpose of processing agricultural commodities. Proceeds from the stock sale may be used to recapitalize an existing cooperative, to develop a new processing facility or product line, or to expand an existing production facility. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(c) *Unauthorized projects and purposes.*

(1) Businesses housed in private homes, except when the pro-rata value of the owner's living quarters is not included in the guaranteed loan.

(2) Any project that does not meet the requirements of paragraphs (d)(2), (d)(3), and (d)(4) in 7 U.S.C. 1932.

(3) Interim financing.

(4) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or the immediate family of such an individual when such individual will retain any portion of the ownership of the borrower, unless the Agency has determined that the distribution or payment is a part of the transfer of ownership within:

- (i) The immediate family; or
- (ii) An Employee owned Cooperative.

(5) Loan guarantees to lending institutions, investment institutions, or insurance companies.

(6) The guarantee of lease payments.

(7) The guarantee of loans made by other Federal agencies.

(8) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project that involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(9) Loan funds may not be used to support inherently religious activities.

(d) *Borrower eligibility.* In addition to the criteria specified in §5001.8(a)(1) and (2), a borrower must meet both of the criteria specified in paragraphs (d)(1) and (2) of this section to be eligible for a Business and Industry guaranteed loan.

(1) A borrower must be:

(i) A cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or not-for-profit basis;

(ii) An Indian tribe on a Federal or State reservation or other Federally recognized tribal group;

(iii) A public body; or

(iv) An individual.

(v) A cooperative organization housed in an urban area is eligible provided certain rural benefits and requirements are met.

(2) A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

- (i) Provide employment;
- (ii) Improve the economic or environmental climate;

(iii) Promote the conservation, development, and use of water for aquaculture; or

(iv) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation).

(e) *Additional borrower requirements.* The recipient of a loan guarantee under paragraph (a)(2)(xxii) of this section shall include in an appropriate agreement with retail and institutional facilities to which the recipient sells locally or regionally produced agricultural food products a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products.

(f) *Additional application process requirements.*

(1) *Obligation of funds.* If funds are insufficient to cover all applications pending approval, the Agency will allocate funds based on the date and time, based on Eastern time, a complete application is received, with those received first being funded first.

(2) *Priority.* In making or guaranteeing a loan under paragraph (a)(2)(xxii) of this section, the Secretary shall give priority to projects that have components benefiting underserved communities.

(g) *Additional application documentation provisions.*

(1) *Applications.* In addition to the application requirements specified in § 5001.12, lenders shall submit the following as applicable:

(i) *Feasibility study.* A feasibility study by a qualified consultant may be required by the Agency for startup businesses or existing businesses when the project will significantly affect the borrower's operations. If a feasibility study of a cooperative is required, the feasibility study will determine the viability of the business and not the individual farm operators.

(ii) *Certification of Non-Relocation and Market Capacity.* If the loan does not meet the requirements of paragraphs (d)(2), (d)(3), and (d)(4) in 7 U.S.C. 1932,

a form approved by the Agency concerning non-relocation and market capacity.

(iii) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(2) *Simplified applications.* For applications for loan guarantees of \$400,000 or less, the lender may submit an application in conformance with § 5001.12(b).

(h) *Additional origination responsibilities—*(1) *Financial statements.* Consolidated financial statements shall be required for variable interest entities in accordance with the Financial Accounting Standards Board financial interpretation 46, Consolidation of Variable Interest Entities, and eliminating intercompany transactions.

(2) *Collateral—*(i) *Cooperative stock.* At a minimum, for the purchase of cooperative stock, the lender must secure the loan with a lien on the stock acquired with loan funds, an assignment of any patronage refund, and the full and unconditional personal, partnership, or corporate guarantee of the borrower.

(ii) *Leasehold interest.* Subject to approval by the Agency, a leasehold interest may be used as collateral for loans under this section provided the underlying lease meets the requirements specified in § 5001.101(a)(1)(viii).

(iii) *Discounting collateral.* When evaluating collateral for loans under this section, the lender shall comply with the requirements specified in paragraphs (h)(2)(iii)(A) through (E) of this section.

(A) No value will be assigned to unsecured personal, partnership, or corporate guarantees.

(B) A maximum of 80% of current market value will be given to real estate. Special purpose real estate should be assigned less value.

(C) A maximum of 60% of book value to be assigned to acceptable accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts and other accounts deemed not to be collateral will be omitted. Calculations to determine the percentage to be applied in the analysis are to be based on the realizable value of the accounts receivable taken from a current aging of accounts receivable from the borrower's most recent financial statement.

(D) A maximum of 60% of book value will be assigned to inventory.

(E) Collateral value assigned to machinery and equipment, furniture and fixtures will be based on its marketability, mobility, useful life, and alternative uses, if any. Collateral value assigned to these types of security will not exceed 70%.

(3) *Payment and performance bond.* A payment and performance bond sufficient to mitigate Agency risk if the project is never completed must be provided.

(i) *Additional servicing requirements—repurchase.* Repurchased loans may be sold without recourse to third-party private investors.

(j) *Additional guarantee- and loan-related requirements.*

(1) *Marginal/substandard loans.* It is not intended that the guarantee authority will be used for marginal or substandard loans or for the relief of lenders having such loans.

(2) *Conditional Commitment.* For the purchase of cooperative stock, the Conditional Commitment shall require the cooperative to provide the lender with all required Federal, State, and local permits and other clearances involving the environmental aspects for review and approval.

(3) *Lines of credit.* Lines of credit are subject to the conditions identified in paragraphs (j)(3)(i) through (v) of this section.

(i) The maximum term of a line of credit is 7 years, or limited to the term of the other guaranteed loans approved under this subpart, whichever is less.

(ii) The total principal balance owed at any one time on line of credit advances may not exceed the line of credit ceiling. If a lender exceeds the credit ceiling, any loss payment will be reduced by the amount the credit ceiling was exceeded.

(iii) As part of the lender's annual review of the borrower's operation, and before funds are re-advanced, the lender will verify to the satisfaction of the Agency that the borrower is in compliance with the provisions of the lender's line of credit agreement and term loan agreement, income and loan proceeds for the previous operating cycle have been properly accounted for, and the borrower's projected cash flow for the

borrower's upcoming operating cycle, using reasonable assumptions, indicates a reasonable chance of repayment. The total amount advanced will not exceed the projected credit needs for that operating cycle as indicated in the borrower's projections, unless the projections are revised and continue to reflect feasibility.

(iv) The lender must ensure that lines of credit remain adequately secured with any suitable collateral. At no time will advances be made when the outstanding principal balance exceeds the discounted value of the collateral securing the line of credit.

(v) Lines of credit must be retained by the lender; they cannot be assigned or sold on the secondary market.

(4) *Issuance of Loan Note Guarantee.*

(i) Paragraph §5001.33(a)(2) notwithstanding, the Agency may, at its sole discretion, issue a Loan Note Guarantee prior to all planned property acquisitions having been completed and all development having been substantially completed in accordance with plans and specifications. In considering whether to issue a Loan Note Guarantee prior to construction being completed, the Agency will consider the added risk associated with issuing a Loan Note Guarantee under such conditions. When negotiating the percent of guarantee with the lender, the Agency will consider these added risks and the credit risks and the lender's experience in financing the type of project. Where the Agency determines it is warranted, the percent of guarantee will be reduced by a minimum of 10%.

(ii) If, for the purchase of cooperative stock, the lender requests the issuance of the Loan Note Guarantee before the cooperative becomes operational, the lender must certify to the Agency that the cooperative has all of the required Federal, State, and local permits and other clearances involving the environmental aspects for review and approval.

(5) *Funding limits.* At the time of loan approval, the full amount of outstanding principal and interest balance associated with Business and Industry loans, including the amount of the loan being approved, cannot exceed \$25,000,000 for any one borrower, except that for a cooperative organization this

limit shall be \$40,000,000 for rural projects processing value added commodities or significantly benefits one or more entities eligible for assistance for the purposes described in paragraph (b) of this section.

(i) The total amount of Business and Industry loans made to cooperative organizations and guaranteed for a fiscal year with principal amounts that are in excess of \$25,000,000 may not exceed 10% of the Business and Industry loans guaranteed for the fiscal year.

(ii) The principal amount of a Business and Industry loan made for the purchase of cooperative stock may not exceed \$600,000.

(6) *Guarantee fee.* The maximum guarantee fee that may be charged is 2%. The guarantee fee may be reduced to 1% if the borrower is a high impact business and is located in an area of long term population decline and job deterioration as a result of persistent economic hardship, significant economic loss from a Presidentially-declared disaster, or a fundamental structural economic change. Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1%. The limit will be announced by publishing a notice in the FEDERAL REGISTER. Once the limit has been reached, the guarantee fee for all additional loans obligated during the remainder of that fiscal year will be 2%.

(7) *Maximum percent of guarantee.* The maximum loan guarantees issued to a Rural Development approved lender with Business and Industry funding is:

(i) 80% if the guaranteed loan amount is \$5 million or less;

(ii) 70% if the guaranteed loan amount \$10 million or less, but greater than \$5 million; or

(iii) 60% if the guaranteed loan amount is greater than \$10 million.

§ 5001.104 Rural Energy for America Program.

(a) *Project eligibility.* To be eligible for a Rural Energy for America Program guaranteed loan, the project must meet the criteria specified in paragraphs (a)(1) through (a)(3) of this section and in § 5001.6.

(1) The project shall be for the purchase, installation, expansion and/or other energy-related improvement of a renewable energy system or to make energy efficiency improvements; and

(2) The project shall be for technology that is—

(i) Pre-commercial or commercially available, and

(ii) Replicable.

(3) The project must be located in a rural area.

(4) The project may include the refinancing of any loan when the Agency determines that the project is viable and equal or better rates or terms are offered provided that the debt being refinanced will be less than 50% of the new loan amount.

(b) *Borrower eligibility.* To be eligible for a Rural Energy for America Program guaranteed loan, a borrower must be an agricultural producer or rural small business and must meet the criteria specified in § 5001.8(a)(1) and (2).

(c) *Additional application process requirements—obligation of funds.* If funds are insufficient to cover all applications pending approval, the Agency will allocate funds based on the date and time, based on Eastern time, a complete application is received, with those received first being funded first.

(d) *Additional application documentation provisions.* In addition to the application requirements specified in § 5001.12, lenders shall submit the following as applicable:

(1) *Certifications.* The lender must certify in the application that the project is able to demonstrate technical merit and that the borrower is an agricultural producer or rural small business.

(2) *Technical report.* For renewable energy system projects with total eligible project costs of more than \$200,000, a satisfactory technical report that demonstrates that the project is commercially viable and can be installed and perform as intended in a reliable, safe, cost-effective, and legally compliant manner must be provided to the Department of Energy (DOE) for review, unless otherwise stated in a FEDERAL REGISTER Notice To determine the overall technical merit of the renewable energy system, the lender must submit its proposal to the Agency for review.

(3) *Energy assessment/audit.* For energy efficiency improvement projects, an energy assessment, with adequate and appropriate evidence of energy savings expected when the system is operated as designed, must be provided. For energy efficiency improvement projects with total eligible project costs greater than \$50,000, an energy audit is required. The lender must submit energy assessments and energy audits to the Agency for review.

(4) *Feasibility study.* A feasibility study by a qualified consultant is required for each renewable energy system project seeking a loan guarantee of greater than \$200,000.

(5) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(e) *Additional origination responsibilities.*

(1) *Financial statements.* Consolidated financial statements shall be required for variable interest entities in accordance with the Financial Accounting Standards Board financial interpretation 46, Consolidation of Variable Interest Entities, and eliminating intercompany transactions.

(2) *Discounting collateral.* When evaluating collateral for loans under this section, the lender shall comply with the requirements specified in § 5001.103(h)(2)(iii).

(3) *Payment and performance bond.* A payment and performance bond sufficient to mitigate Agency risk if the project is never completed must be provided.

(f) *Additional servicing responsibilities—post-construction reporting requirements.* Once the project has been constructed, the lender must provide to the Agency annual reports from the borrower on the performance characteristics and results of the projects.

(1) *Schedule.* For renewable energy system projects, these reports are to be provided commencing in the first full calendar year after construction is completed and continuing for 3 full years. For energy efficiency improvement projects, these reports are to be provided commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years.

(2) *Contents.* Reports for renewable energy system projects must contain, at a minimum, information on output and sales and/or energy savings. Reports for energy efficiency improvement projects must contain, at a minimum, information on energy savings. Additional information to be included in these reports will be negotiated between the Agency and the lender/borrower prior to the execution of the Loan Note Guarantee.

(g) *Additional guarantee- and loan-related requirements—(1) Issuance of Loan Note Guarantee.* In addition to the requirements specified in § 5001.34, for Rural Energy for America Program loans, the lender must certify that all planned property acquisitions and development have been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications; the project conforms with applicable Federal, State, and local codes; and costs have not exceeded the amount approved by the lender and the Agency.

(2) *Funding considerations—(i) Maximum loan guarantee.* At the time of loan approval, the full amount of outstanding principal and interest balance associated with Rural Energy for America Program loans, including the amount of the loan being approved, cannot exceed \$25,000,000 for any one borrower.

(ii) *Loan guarantee amount.* In determining the amount of a loan guarantee, the Agency will take into consideration the following seven criteria:

(A) The type of renewable energy system to be purchased;

(B) The estimated quantity of energy to be generated by the renewable energy system;

(C) The expected environmental benefits of the renewable energy system;

(D) The extent to which the renewable energy system will be replicable;

(E) The amount of energy savings expected to be derived from the activity, as demonstrated by an Agency-approved energy audit;

(F) the expected energy efficiency of the renewable energy system; and

(G) The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity.

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(3) *Matching funds.* The amount of a Rural Energy for America loan guarantee, including any grants and direct loans made under this program, that will be made available to an eligible project will not exceed 75% of total eligible project costs. Eligible project costs are only those costs associated with the items identified in paragraphs (g)(3)(i) through (xi) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(i) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(ii) Post-application construction or improvements, except residential.

(iii) Energy audits or assessments.

(iv) Permit and license fees.

(v) Professional service fees, except for application preparation, packager fees, and broker fees.

(vi) Feasibility studies and technical reports.

(vii) Business plans.

(viii) Retrofitting.

(ix) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and based

on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency improvements are allowed.

(x) Working capital.

(xi) Land acquisition.

(4) *Maximum percent of guarantee.* The maximum loan guarantees issued to a Rural Development approved lender with Rural Energy for America Program funding is:

(i) 85% if the guaranteed loan amount is \$600,000 or less;

(ii) 80% if the guaranteed loan amount \$5 million or less, but greater than \$600,000;

(iii) 70% if the guaranteed loan amount is greater than \$5 million but less than or equal to \$10 million; or

(iv) 60% if the guaranteed loan amount is greater than \$10 million.

§§ 5001.105–5001.199 [Reserved]**§ 5001.200 OMB control number.**

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), the information collection provisions have been submitted to the Office of Management and Budget (OMB) for approval as a new collection and assigned OMB number 0570-0054.